

TEXT OF PROPOSED REGULATIONS

In the following, underline indicates new or additional text and ~~strikethrough~~ indicates deleted text.

California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs and Parole

Chapter 1, Rules and Regulations of Adult Operations and Programs

Article 1. Behavior

3006. Contraband.

Subsections 3006 – ~~3006(c)(15)~~ 3006(c)(10) are unchanged.

Subsection 3006(c) is unchanged but shown as reference.

(c) Except as authorized by the institution head, inmates shall not possess or have under their control any matter which contains or concerns any of the following:

Subsection 3006(c)(11) is amended to read:

(11) Catalogs, advertisements, brochures, and other commercial material ~~whose primary purpose is to sell a product(s) or service(s) and when taken as a whole, lacks serious literary, artistic, political, educational, or scientific value~~ which are obscene in nature as described in subsection (15) below.

Subsections 3006(c)(12) – 3006(c)(14) are unchanged.

Subsection 3006(c)(15) is unchanged but shown as reference.

(15) Obscene material and mail containing information concerning where, how, or from whom obscene material may be obtained.

Subsection 3006(c)(15)(A) is amended to read:

(A) Obscene material means material taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest; and is material which taken as a whole, depicts ~~or describes~~ sexual conduct; and which, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Subsection 3006(c)(15)(B) is unchanged but shown as reference.

(B) When it appears from the nature of the matter or the circumstances of its dissemination, distribution, or exhibition that it appeals to deviant sexual groups.

Subsections 3006(c)(15)(C) – ~~3006(c)(15)(C)(6)~~ are amended to read:

(C) Material subject to the tests in paragraphs (A) or (B) includes, but is not limited to ~~material~~ pictures or images that depict:

(C)(1) ~~Depicts, displays, or describes p~~Penetration of the vagina or anus, or contact between the mouth and the genitals.

(C)(2) ~~Depicts, displays, or describes b~~Bestiality, sadomasochism, or an excretory function including urination, defecation, or semen.

(C)(3) ~~Portrays the n~~ Nudity of a minor, or person who appears to be under 18 years old.

(C)(4) ~~Portrays e~~ Conduct which appears to be non-consensual behavior.

(C)(5) ~~Portrays e~~ Conduct which is or appears to be forceful, threatening, or violent.

(C)(6) ~~Portrays e~~ Conduct where one of the participants is a minor, or appears to be under 18 years old.

New subsection 3006(c)(15)(D) is adopted to read:

(D) Text-only material shall not be considered obscene unless designated by the Division of Adult Institutions (DAI). DAI shall then place the designated text-only material on the Centralized List of Disapproved Publications, subject to subsection 3134.1(e).

Subsections 3006(c)(16) – 3006(c)(17) are unchanged.

Subsection 3006(c)(17)(A) is amended to read:

Sexually explicit material shall be defined as material that shows the frontal nudity of either gender, including the fully exposed female breast(s) and/or the genitalia of either gender.

Subsections 3006(c)(17)(B) – 3006(c)(18) are unchanged.

New subsection 3006(c)(19) is amended to read:

(19) Written materials or photographs that indicate an association with validated STG members or associates, as described in subsections ~~3378(e)(8)(C)-(D)~~ 3378.2(b)(5)-(6).

Subsection 3006(d) is unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2600, 2601, 2772, 2790, 4574, 4576, 5030.1, 5054 and 5057, Penal Code.

Subchapter 2. INMATE RESOURCES

Article 4. Mail

3134.1. Processing of Publications.

Subsections 3134.1(a) – 3134.1(c) are unchanged.

Subsection 3134.1(d) is amended to read:

(d) Notifications, to Publisher, to the Inmate, and to the Division of Adult Institutions (DAI) for Disapproval of Publication. When incoming books, magazines, or publications to an inmate are withheld or disallowed on a temporary basis by the institution pending approval from DAI, a letter shall be sent by the institution to the publisher explaining why the item was denied. A book, magazine, or publication denied to an inmate(s) based on a violation of departmental regulation or policy, and that ~~has is~~ is not ~~previously been~~ included on a the current eCentralized ~~list of banned~~ Disapproved publications (Centralized List) pursuant to subsection 3134.1(e), shall only require one notification letter per institution to be sent to the publisher. At a minimum the letter must include the reason why the book, magazine, or publication was denied, the names and CDCR number for all inmates, the applicable CCR section that the publication violates, and a notice to the Publisher of their right to appeal per subsection 3137(c). The letter must be sent within 15 calendar days of the determination to disallow the book, magazine or publication, with a copy of the notification letter and supporting documents to be retained by the facility for a minimum of seven years. ~~The institution shall also notice the Division of Adult Institutions to request inclusion of the disallowed publication on the centralized list of banned publications. W~~

~~In addition Concurrent to the letter to the publisher,~~ when incoming or outgoing publications addressed to or being sent by an inmate are withheld or disallowed, the institution shall also notify the inmate addressee ~~inmate shall be informed~~ via CDCR Form 1819 (Rev. 08/08), Notification of Disapproval-Mail/Packages/Publications (Rev. 6/98), which is incorporated by reference, of The CDCR Form 1819 shall include the reason, disposition, name of official disallowing the publication, and the name of the official to whom an appeal can be directed.

The institution shall also ~~concurrently notify notice the Division of Adult Institutions (DAI) to and~~ request ~~inclusion of that DAI affirm or deny the withholding of~~ the temporarily disallowed publication ~~on the Centralized List of Disapproved Publications~~. DAI shall provide the decision within 30 calendar days of receiving the request. If DAI affirms the withholding of the publication, Disallowance of the publication shall become permanent if DAI affirms the inclusion of the publication on the Centralized List. If DAI denies the withholding of the publication request for inclusion, the institution shall deliver the publication to the inmate within 15 calendar days, upon ~~notification from receipt of DAI's decision~~.

For periodicals, as defined in subsection 3133(a)(3), the DAI may include a periodical on the Centralized List, in accordance with subsection 3134.1(e), provided that all issues of the publication for twelve consecutive months violate departmental regulation or policy. However, an institution may disallow individual issues of a periodical in accordance with this subsection. The disallowance of individual issues of a periodical shall become permanent, as to those issues only, if DAI affirms an institution's decision to temporarily withhold/disallow the individual issues. If the DAI denies the institution's decision to temporarily withhold individual issues of a periodical, the institutional shall deliver those issues to the inmate within 15 calendar days upon receipt of DAI's decision.

Subsection 3134.1(e) is amended to read:

(e) Centralized List of Disapproved Publications. The Division of Adult Institutions shall distribute to each institution a e Centralized † List of † Disapproved † Publications that are prohibited as contraband. Examples of publications that would be included on the e Centralized † List would include, but not be limited to, publications that contain ~~sexual content~~ obscene material as described in subsection 3006(c)(15), sexually explicit images that depict frontal nudity as described in subsection 3006(c)(17)(A) ~~or nudity~~, warfare or weaponry, bomb making instructions, or STG recruitment material written materials or photographs, as described in subsections 3378.2(b)(5)-(6), etc. Publications that are enumerated on ~~this e the~~ Centralized † List are not allowed in any institution. Local institutions may not add items to the e Centralized † List. When a publication is placed on the e Centralized † List, the Division of Adult Institutions shall send a letter to the publisher explaining why the publication was excluded. At a minimum, the letter must include the reason why the publication is excluded, the applicable CCR section that the publication violates, and a notice to the Publisher of its right to appeal per CCR subsection 3137(c). The letter must be sent within 15 calendar days of the determination to disapprove the publication, with a copy of the notification letter and supporting documents to be retained by the facility for a minimum of seven years.

Note: Authority cited: section 5058, Penal Code. Reference: Sections 2601 and 4570, Penal Code; Procunier v. Martinez, 416 U.S. 396; and Bell v. Wolffish, 99 S. Ct. 1861.

3135. Disturbing or Offensive Correspondence.

Subsections 3135(a) – 3135(c)(13) are unchanged.

Subsection 3135(c) is unchanged but shown as reference.

(c) Certain correspondence, including but not limited to the following, is disallowed, regardless of values or morals, in order to ensure the safety and security of the institution/facility:

New subsection 3135(c)(14) is amended to read:

(14) Contains written materials or photographs that indicate an association with validated STG members or associates, as described in subsections ~~3378(c)(8)(C)-(D)~~ 3378.2(b)(5)-(6).

Subsection 3135(d) is amended to read:

(d) Inmates shall not possess or have under their control obscene material and/or mail containing information concerning where, how, or from whom obscene material may be obtained. Obscene material means catalogs, advertisements, brochures, and/or material taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest. It is material which taken as a whole, depicts ~~or describes~~ sexual conduct, and lacks serious literary, artistic, political, or scientific value. Additionally, material is considered obscene when it appears from the nature of the matter or the circumstances of its dissemination, distribution or exhibition that it appeals to deviant sexual groups. Material subject to the test of the above includes, but is not limited to, pictures or images that depict:

Subsections 3135(d)(1) – 3135(d)(7) are amended to read:

(1) ~~Portrays~~ s Sexually explicit materials, which are defined as materials that show frontal nudity including personal photographs, drawings, and magazines and pictorials that show frontal nudity.

(2) ~~Portrays, displays, describes, or represents~~ p Penetration of the vagina or anus, or contact between the mouth and genitals.

(3) ~~Portrays, displays, describes, or represents~~ b Bestiality, sadomasochism, or an excretory function, including urination, defecation, or semen.

(4) ~~Portrays, displays, describes, or represents~~ n Nudity of a minor, or person who appears to be under 18 years old.

(5) ~~Portrays, displays, describes, or represents~~ e Conduct that appears to be non-consensual behavior.

(6) ~~Portrays, displays, describes, or represents~~ e Conduct that appears to be forceful, threatening, or violent.

(7) ~~Portrays, displays, describes, or represents~~ s Sexual conduct where one of the participants is a minor, or appears to be under 18 years old.

A sentence is added following subsection 3135(d)(7) and is adopted to read:

Text-only material shall not be considered obscene unless designated by the Division of Adult Institutions (DAI). DAI shall then place the designated text-only material on the Centralized List of Disapproved Publications, subject to subsection 3134.1(e).

Subsection 3135(e) is unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2601 and 5054, Penal Code; and Procunier v. Martinez, 416 U.S. 396.